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Attorneys for Defendants
RECONTRUST COMPANY, N.A.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS TRUSTEE
FOR THE BENEFIT OF THE
CERTIFICATEHOLDERS CWMBS, INC. CHL
MORTGAGE PASS-THROUGH TRUST 2005-2
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005 2;
AMERICA'S WHOLESALE LENDER;
COUNTRYWIDE HOME LOANS, INC.;
AND BAC HOME LOANS SERVICING, LP

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT
SAN JOSE DIVISION

IN RE KIMBERLY COX,

Debtor.

Case No.: 5:10-bk-61716

Chapter 7

Adversary No.: 5:11-ap-05106

IN RE KIMBERLY COX,

Plaintiff,

vs.

**MOTION TO DISMISS FOR LACK OF
STANDING, FOR LACK OF SUBJECT
MATTER JURISDICTION, FOR
ABSTENTION, AND FOR FAILURE
TO STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED**

RECONTRUST COMPANY, N.A. ET. AL.,

Defendants.

Date: June 10, 2011
Time: 2:00 P.M.
Ctrm: Courtroom 3070
Place: 280 South First Street
San Jose, CA

Judge: Hon. Charles Novack

1 PLEASE TAKE NOTICE that on June 10, 2011 at 2:00 p.m., in Courtroom 3070 of the
2 above-entitled United States Bankruptcy Court located at 280 South First Street, San Jose, CA,
3 Defendants Recontrust Company, N.A. ("Recontrust Company"); Mortgage Electronic
4 Registration Systems, Inc. ("MERS"); The Bank of New York Mellon FKA The Bank of New
5 York as Trustee for the Benefit of the Certificateholders CWMBS, Inc. CHL Mortgage Pass-
6 Through Trust 2005-2 Mortgage Pass-Through Certificates, Series 2005 2 ("Bank of New York
7 Melon"); America's Wholesale Lender¹; Countrywide Home Loans, Inc. ("Countrywide"); and
8 BAC Home Loans Servicing, LP ("BAC Home Loans") will move this Court to dismiss the
9 complaint filed by Plaintiff Kimberly Cox ("Plaintiff").
10

11 Defendants seek dismissal of this case for lack of standing. The real property at issue and
12 the causes of action relating to it are property of the bankruptcy estate and only the Chapter 7
13 trustee has standing to bring any claims relating to them.
14

15 Defendants seek dismissal of this action for lack of subject matter jurisdiction pursuant to
16 F.R.Civ.P. 12(b)(1) as incorporated by F.R.B.P. 7012. None of the causes of action arise in or
17 under Title 11 as they could be brought, to the extent they could be brought in any Court of law,
18 in nonbankruptcy Court. The claims also do not relate to administration of the bankruptcy estate
19 as there will be no administration of the bankruptcy estate. Furthermore, if Plaintiff succeeds in
20 receiving an order compelling the Chapter 7 Trustee to abandon the subject real property, the real
21 property will not be part of the bankruptcy estate and by definition cannot be administered.
22

23 Defendants seek an order of this Court abstaining from hearing this matter pursuant to 28
24 U.S.C. § 1334(c). The sole recognized cause of action is for Quiet Title, a state law claim. As
25
26

27 ¹ America's Wholesale Lender is actually not a separate defendant but a registered
28 fictional business name of defendant Countrywide Home Loans. However, defendants must work
within the allegations of Plaintiff's complaint and thus will respond accordingly.

1 this is a no asset Chapter 7 liquidation, there is no reason for this Court to hear this matter and the
2 Court should allow it to be heard in state court.

3 Defendants seek dismissal of this action for failure to state a claim pursuant to F.R.Civ.P.
4 12(b)(6) as incorporated by F.R.B.P. 7012. Plaintiff pleads four purported causes of action, only
5 one of which is actually a cause of action. They are

6 (1) Declaratory Relief to Determine the Validity, Extent, Interest, and Secured Status of
7 Alleged Lien and Associated Debt;

8 (2) Declaratory Relief to Disallow Claims as Secured and Cancel Security Instrument
9 Fails;

10 (3) Injunctive Relief to Stop Foreclosure Action; and

11 (4) Quiet Title.

12 Each and every one of these claims fails to state a valid claim and must be dismissed. The
13 majority of the claims are based on the false premise that some break in the chain of title has
14 rendered the Deed of Trust on Plaintiff's residence void and the residence unsecured. Plaintiff's
15 alleged facts show the opposite – that the chain of title is proper. Furthermore, all of the claims
16 except for quiet title are not recognized causes of action, but instead remedies. As the Quiet Title
17 claim is itself baseless, all the claims fail.

18 This motion is based upon the following memorandum of points and authorities and the
19 accompanying notice of motion, all filed concurrently herewith, the pleadings and papers on file
20 in this action and in the underlying bankruptcy case, and upon such further evidence, both oral
21 and documentary, as may be offered at the time of the hearing.

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1 DATED: May 13, 2011

Respectfully submitted,

2 SEVERSON & WERSON
3 A Professional Corporation

4
5 By: /s/ Bernard J. Kornberg
6 Bernard J. Kornberg

7 Attorneys for Defendants
8 RECONTRUST COMPANY, N.A.;
9 MORTGAGE ELECTRONIC
10 REGISTRATION SYSTEMS, INC.; THE
11 BANK OF NEW YORK MELLON fka The
12 Bank of New York as Trustee for the Benefit of
13 the Certificateholders CWMBS, Inc. CHL
14 Mortgage Pass-Through Trust 2005-2 Mortgage
15 Pass-Through Certificates, Series 2005 2;
16 AMERICA'S WHOLESALE LENDER;
17 COUNTRYWIDE HOME LOANS, INC.; and
18 BAC HOME LOANS SERVICING, LP
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